

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD
C.M.A.Nos.340 and 344 of 2018

Date: 13.08.2018

Between:

Alwal Roopam S/o.Late A.Nagaiah,
Aged about 59 years, Occ: Service,
R/o.H.No.6-113, Old Malkajgiri,
Near Ram Mandir, Hyderabad-500047 ... Appellant

And

A.Mohan Rao S/o.Late Sri A.Narayana,
Aged about 60 years, Occ: Business,
R/o.H.No.6-114, Old Malkajgiri,
Old Rama Mandir,
R.R. District – 500047 and ten others ... Respondents

Counsel for the Appellant : Mr.V.V.Ramana

Counsel for the Respondents: -----

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These two civil miscellaneous appeals arise out of I.As. filed in a common suit i.e. O.S.No.702 of 2017 on the file of the XVI Additional Metropolitan Sessions Judge, Ranga Reddy district at Malkajgiri.

2. Though notice has been served, respondents No.8 to 10, who are the contesting respondents, have not entered appearance. We have heard Mr.V.V.Ramana, learned counsel for the appellant in both these appeals.

3. The appellant filed O.S.No.702 of 2017 *inter alia*, for declaring certain registered sale deeds bearing Nos.3667/1999, 3668/1999, 3669/1999 and 3670 of 1999 all dated 19.08.1999 and also registered sale deed No.19206/15 dated 10.09.2015 and sale deed No.19207 of 2015 dated 10.01.2015 in favour of respondents No.8 and 9, as null and void. Along with the said suit, the petitioner also filed I.A.No.544 of 2017, for restraining respondent No.10 from changing the nature of the petition schedule property. He has also filed I.A.No.545 of 2017, for an interim injunction, restraining respondents No.8 to 10 from further alienating or creating any charge over the petition schedule property, in favour of third parties. Both these applications were opposed by respondents No.8 to 10. On consideration of the documentary evidence adduced by both the parties, the lower court

has dismissed both the I.As. Feeling aggrieved by the dismissal of these I.As., the plaintiff filed these appeals.

4. Mr.V.V.Ramana, learned counsel for the appellant submitted that respondents No.1 and 2 and respondents No.8 to 10 have played fraud on his client, as the sale consideration agreed to be paid through cheques, has not reached him.

5. A perusal of the order of the lower court shows that it has traced the history of the litigation as under:

The appellant is the son of one Nagaiah, while respondents No.1 and 2 are the sons of Narayana, who is the brother of Nagaiah. Both Nagaiah and Narayana are no more. During the life time of Narayana, the competent authority had issued tenancy certificate dated 06.11.1997 in his favour. The Joint Collector, Ranga Reddy vide Ex.R2 - order dated 23.08.2014, confirmed the tenancy certificate. The appellant filed W.P.No.1628 of 2016 in this Court, against the Municipal Corporation of Hyderabad and respondents No.1 and 2, for taking action against the illegal constructions. The said writ petition was dismissed. The appellant has filed C.R.P.No.3420 of 2014 before this Court, challenging Ex.R2 - order and the same is pending.

Though the appellant did not have title, evidently respondents No.1 and 2, the legal heirs of Narayana, thought it fit to join him in the execution of sale deeds in favour of respondents No.8 and 9.

Accordingly, the appellant joined in the execution of Ex.P5 – registered sale deed dated 09.09.2015 in favour of respondent No.8 in respect of 845 sq.yards of land and also Ex.P6 – registered sale deed dated 09.09.2015 in favour of respondent No.5 for 950 sq.yards. Both these sale deeds are subject matter of the suit. On the aforementioned facts of the case, the court below has held - (1) that as on today, the petitioner does not have legal title, as the tenancy certificate granted in favour of the father of respondents No.1 and 2 are confirmed by the Joint Collector and is the subject matter of C.R.P.No.3420 of 2014 and that until and unless the petitioner succeeds in the C.R.P., he is not entitled to claim the property (2) that the petitioner himself has joined respondents No.1 and 2 in execution of Ex.P5 and P6 - registered sale deeds and that, therefore, the elements of *prima facie* case and balance of convenience do not lie in his favour to restrain respondents No.8 and 9 and respondent No.10, to whom respondents No.8 and 9 have alienated the suit schedule property, from proceeding with the construction.

6. On a careful consideration of the facts in their entirety and the reasons assigned by the lower court, we do not find any error in both the orders under appeal.

7. Hence, both these C.M.As. are dismissed.

8. As a sequel to the dismissal of the C.M.As., I.A.No.1 of 2018 in C.M.A.No.340 of 2018 and I.A.No.1 of 2018 in C.M.A.No.344 of 2018 stand dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 13th August, 2018

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